

2. Remarks

Responsive to the Office Action mailed 08 December 2009 and with an extension of time of three months, a Petition for which is filed herewith, the present paper is timely filed on or before 08 June 2010.

By the present paper, claims 1 - 4, 8 - 12, 21, and 40 - 91 are cancelled without prejudice or disclaimer of subject matter therein, claims 5 - 7, 13 - 20, and 22 - 39 are amended, and new claim 92 is presented. Claims 5 - 7, 13 - 20, 22 - 39, and 92 are in the Application.

The Second Rule 132 Declaration of Dr. Eric Jungermann is filed herewith.

Entry of the claim amendments and reconsideration of the Application are respectfully requested.

A. The New Claims

New claim 92 combines the limitations of claims 1 - 4, now cancelled, and recites that the cleansing device is a personal cleansing device. Support for this new limitation can be found in the specification at, for example, paragraph [0010].

New claim 92 also recites that the soap is a sodium soap having a melting range of 120°F to 160° F and includes particular ingredients. Support for the added limitations can be found in the specification at, for example, paragraphs [0051] and [0052].

New claim 92 further recites that Applicants' inventive cleansing device produces lather in hard as well as soft water. Support for this limitation can be found in the specification at, for example, paragraph [0064].

New claims 93 to 98 are product by process claims, limiting the personal cleansing device to one in which the pourable sodium soap is made by a specific process in which the oil that must come from specified sources, or the fatty acid of tallow, is heated and saponified. Optional steps can follow the saponification step. Support for the new product-by-process claims can be found in the specification at, for example, paragraphs [0052] through [0054].

Support for the compositional limitation of new claim 94 can be found in the specification at, for example, paragraph [0059].

Support for the compositional limitations of new claim 95 can be found in the specification at, for example, paragraphs [0052] and [0058].

Support for the compositional limitations of new claim 96 can be found in the specification at, for example, paragraph [0053].

Applicants respectfully submit that new claims 92 – 102 do not introduce new matter into the Application.

B. The Claim Amendments

All claims are amended to delete reference numerals.

Claims 5-7, 13 - 21, and 22 - 39 are amended to make them consistent with new claim 92, from which they depend. Support for the amendment is as above, and further in the claims as filed.

Claim 7 is amended to recite "amino alcohols". Support for the amendment can be found in the specification at, for example, paragraph [0047].

Applicants respectfully submit that the claim amendments do not introduce new matter into the Application.

C. Provisional Double Patenting Rejection

Claims 1 - 39 and 54 were provisionally rejected as allegedly obvious over the claims of co-pending U.S.S.N. 10/696,069. Because the scope and content of the instant claims and the scope and content of the claims of the '069 Application remains to be determined, Applicants respectfully defer filing of a Terminal Disclaimer until such time as the scope and content of the instant claims or the claims of the '069 Application is finally determined.

D. Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, 22, 29, and 54 were rejected as allegedly anticipated by Taylor, U.S. 5,955,417 (Taylor). Because Taylor does not disclose all of the elements of Applicants' claims, arranged as required by the claims, Applicants respectfully traverse.

Applicants' claims are drawn to a personal cleansing device, used on the body of a mammal. Applicants' inventive personal cleansing device includes a pourable sodium soap having a specified melting range. The pourable sodium soap must include salts of fatty acids obtained from specified sources, and must include glycerine in a specified amount.

Taylor discloses a scouring pad for use on delicate inanimate surfaces (soft metals, PTFE). With reference to the (first) Declaration of Dr. Eric Jungermann, filed 22 August 2008 in parent Application U.S.S.N 10/696,069, a copy of which Declaration is attached, the skilled artisan would recognize that the scouring pad disclosed by Taylor, and in particular the waxy solid cleansing composition disclosed therein, is not intended or suitable for use on living tissue (*e.g.*, skin).

In any event, Taylor does not disclose a device that includes pourable sodium soaps meeting all of the limitations of Applicants' claims.

For at least the foregoing reasons, Applicants respectfully submit that the rejection is improper and should be withdrawn.

E. Claim Rejections Under 35 U.S.C. § 103

Claims 3 - 21, 23 - 28, 30 - 32, 35, 36, 38, and 39 were rejected as allegedly obvious over Taylor. Cancellation of claims 8 - 12 and 21 moots the rejection of those claims. The limitations of claims 3 and 4 are combined with those of claims 1 and 2 and presented as new claim 92. Accordingly, Applicants address the applicability *vel non* of the rejection to claim 92, and claims depending therefrom.

As Applicants best understand the rejection, the Office alleges that the compositions of cancelled claims 3 and 4 are merely the result of optimizing the selection and combination of known elements performing their established functions. Applicants do not claim the pourable sodium soaps *per se*. Rather, Applicants claim a personal cleansing device that is a combination of a substrate and a pourable sodium soap, which must meet particular compositional limitations, impregnated substantially throughout the substrate. As discussed below, this combination produces unexpected results.

With reference to the Second Declaration of Dr. Eric Jungermann, filed herewith, pourable sodium soaps meeting the compositional limitations of Applicants' claims have good foaming (lathering) characteristics in soft water, but poor foaming characteristics in hard water. However, as set forth in the Second Declaration, Applicants' inventive personal cleansing device surprisingly has good foaming characteristics in both soft and hard water. The skilled artisan, knowing that sodium soaps of the types used in Applicants' inventive personal cleansing device, including those made by the process disclosed in the specification at paragraphs [0052] to [0054], have poor foaming characteristics in hard water, would not have reasonably expected this result.

For at least the foregoing reasons, Applicants respectfully submit that new claim 92, and all claims depending therefrom, are not obvious over Taylor.

Claims 33, 34, and 37 were rejected as allegedly obvious over Taylor in view of Reuven, U.S. 5,960,506 (Reuven). Claims 33, 34, and 37 depend directly or indirectly from claim 92 that, Applicants respectfully submit, contains patentable subject matter. Accordingly, claims 33, 34, and 37 likewise contain patentable subject matter, wherefor Applicants respectfully submit that claims 33, 34, and 37 are not obvious over Taylor in view of Reuven.

Conclusion

Based on the foregoing amendments and remarks, Applicants respectfully submit that the claims are now in condition for allowance, which allowance is earnestly solicited. If, in the Opinion of the Examiner, a telephone conference would advance prosecution of the Application, the Examiner is invited to telephone the undersigned attorney.

Dated: June 8, 2010

Respectfully submitted,
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By:



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of	:	
Michael Popovsky <i>et al.</i>	:	Group Art Unit 3723
Serial No. 10/696,069	:	Examiner Chin
Filed: October 28, 2003	:	
For: Cleansing Pad	:	

In the Application of	:	
Michael Popovsky <i>et al.</i>	:	Group Art Unit 3723
Serial No. 10/562,311	:	Examiner Chin
Filed: July 2, 2004	:	
For: Cleansing Pad	:	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Declaration of Eric Jungermann Under 37 C.F.R. § 1.132

I, Eric Jungermann, depose and say:

1. This declaration is submitted pursuant to 37 C.F.R. § 1.132 for consideration by the US Patent and Trademark Office in connection with the above-referenced patent applications.

2. I have over fifty years of experience in the personal care industry, having worked at companies including Colgate-Palmolive, Armour Dial, Helene Curtis and Neutrogena. I am a co-inventor on over thirty granted US patents and am a co-inventor on pending US Patent Application Serial No. 10/562,311.

3. In connection with this declaration, I have reviewed the following documents:

- Two patent applications to Popovsky *et al.*, both entitled Cleansing Pad:
 - US Patent Application Publication No. 2005/0000046 (Serial No. 10/696,069);
 - US Patent Application Publication No. 2006/0282966 (Serial No. 10/562,311) a continuation-in-part of Application Serial No. 10/696,069;
- US Patent No. 5,955,417 entitled "Scouring Pad" to Taylor, which is the key patent cited in the Office Actions issued in 10/696,069.

4. For several reasons, the Taylor patent would not be understood by a person having ordinary skill in the art of formulating personal care products as teaching or suggesting a formulation that would be applied to the skin or hair. The Taylor patent describes hard surface cleansing pads containing high levels of synthetic detergents. In contrast, the inventions described in the two applications by Popovsky *et al.* are directed to personal care cleansing pads (*e.g.*, sponges) based on soap formulations.

5. Taylor teaches a waxy solid cleansing composition comprising sodium dodecylbenzene sulfonate in the range of about 10 to about 20 weight percent. Alkylbenzene sulfonates are well-known to be irritating anionic surfactants. In my experience, sulfonates of this type are never used in personal care products.

6. The waxy solid cleansing composition taught by Taylor also requires sodium lauryl sulfate (SLS) in the range of about 5 to about 25 weight percent. It is well-reported in the patent and scientific literature that SLS is a "harsh anionic surfactant" (*see, e.g.*, US Patent No. 5,646,100 at Column 4, lines 14 – 15) and that SLS produces irritation of the skin (*see, e.g.*, S. Marrakchi and H. Maibach, "Sodium lauryl sulfate-induced irritation

in the human face: regional and age-related differences." *Skin Pharmacol. Physiol.* Vol. 19, No. 3 at pp. 177-80 (2006). Dr. Maibach, Professor of Dermatology at the University of California at San Francisco, has published numerous studies on the irritancy of SLS. These publications are listed at www.dermatology.ucsf.edu/faculty/PDF/BiblioHIM.pdf.

7. The waxy solid cleansing composition taught by Taylor also contains two monoethanolamides as required ingredients – stearic monoethanolamide in the range of about 5 to about 25 weight percent and coconut monoethanolamide in the range of about 20 to about 60 weight percent. Thus, the minimum amount of monoethanolamides in the composition taught by Taylor is 25 weight percent. Based on my experience in formulating personal care products, the typical levels of ethanolamides – more commonly diethanolamides than monoethanolamides – used in personal care products is from about 1% to 5% on a weight basis.

9. Based on the levels of SLS, dodecylbenzene sulfonate and monoethanolamides indicated in the Taylor patent, a person having ordinary skill in formulating personal care products would recognize that the waxy solid composition taught by Taylor is not intended for use on skin or hair. Indeed, there is no reference to skin or hair in the Taylor patent. Instead, a person having ordinary skill in the art would read and understand the Taylor patent as teaching a scouring product to be used on hard surfaces. Throughout the Specification Taylor describes his invention as a "scouring pad." For example, in the fourth paragraph of the Summary of the Invention, Taylor states that one objective of his invention as directed to a cleansing pad that has "a substantial scouring and polishing action but which is suitable for use on delicate and soft surfaces made of such as soft metal (e.g., aluminum, copper), non-stick materials (e.g., Teflon) or fine china."

Further Declarant says not.

By: 

Eric Jungermann

Date: _____

July 21, 2008